



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 230724-0172]

RIN 0648-BL91

Fisheries of the Northeastern United States; The 2023-2025 Specifications for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements the 2023-2025 specifications for the Mackerel, Squid, and Butterfish Fishery Management Plan as recommended by the Mid-Atlantic Fishery Management Council. This action sets the 2023-2025 chub mackerel specifications, the 2023-2024 butterfish specifications, and the 2023 *Illex* squid specifications. This action also reaffirms the 2023 longfin squid specifications.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Supplemental Information Report (SIR), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. These documents are also accessible via the Internet at <https://www.mafmc.org>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic

Drive, Gloucester, MA 01930-2298, or available on the internet at:

<https://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, 978-282-8456.

SUPPLEMENTARY INFORMATION:

Background

This rule implements specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years, for chub mackerel, *Illlex* squid, and butterfish, and reaffirms previously announced specifications for longfin squid. Atlantic mackerel specifications for 2023 were set through a separate action (88 FR 6665, February 1, 2023). Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, ensuring maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing limit (OFL).

The regulations implementing the fishery management plan (FMP) require the Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council's SSC. The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than 1 year. In addition, the regulations require the specification of domestic annual harvest (DAH), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On May 10, 2022 (87 FR 27952), we published a final rule in the **Federal Register** implementing the previously approved 2022 specifications for the chub mackerel, butterfish, longfin squid, and *Illex* squid fisheries.

The Council's SSC met in May and July 2022 to reevaluate the chub mackerel, longfin squid, *Illex* squid, and butterfish 2023 specifications based upon the latest information. At those meetings, the SSC concluded that no adjustments to the *Illex* squid, longfin squid, and chub mackerel ABCs were warranted. However, for butterfish, the SSC recommended to use a different biological reference point based on new information from the assessment. The stock was assessed with the recently developed model known as the Woods Hole Assessment Model.

2023 Longfin Squid Specifications

This action maintains the 2022 longfin squid ABC of 23,400 metric tons (mt) for 2023. The background for this ABC is discussed in the proposed rule to implement the 2021-2022 squid and butterfish specifications (86 FR 38586; July 22, 2021) and is not repeated here. The IOY, DAH, and domestic annual processing (DAP) are calculated by deducting an estimated discard rate (2 percent) from the ABC. This results in a 2023 IOY, DAH, and DAP of 22,932 mt (Table 1). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 2). The Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2024 if new information becomes available.

Table 1 – 2023 Longfin Squid

Specification	Metric Tons
OFL	Unknown
ABC	23,400
IOY	22,932
DAH/DAP	22,932

Table 2 – 2021-2022 Longfin Quota Trimester Allocations

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	9,861

II	(May-Aug)	17	3,898
III	(Sep-Dec)	40	9,173

2023-2024 Butterfish Specifications

This action implements the 2023 butterfish specifications and projected 2024 specifications as outlined in Table 3. The SSC reviewed the research track assessment results in May 2022. A variety of ecosystem topics were considered for inclusion in the butterfish assessment. These included predictive models for spatial distribution patterns over time; the influence of environmental drivers; the potential magnitude of natural mortality by marine mammal, bird, and fish populations; and comparative analyses of trends in recruitment and condition factor for a broad range of fish species. The proposed 2023 and projected 2024 butterfish specifications uses a new biological reference point for fishing mortality that is higher than earlier values based on updated scientific information. These specifications maintain the existing butterfish mortality cap in the longfin squid fishery of 3,884 mt and the existing allocation of the butterfish mortality cap among longfin squid trimesters (Table 4).

Table 3 –2023 and Projected 2024 Butterfish Specifications in Metric Tons

Specification	2023	2024
OFL	17,631	16,096
ABC	17,267	15,764
ACT	16,404	14,976
Assumed discards	1,248	1,248
Total discards	5,132	5,132
Butterfish cap in longfin	3,884	3,884
DAH	11,271	9,844

Table 4 –2023 Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery

Trimester	Percent	Metric Tons
I (Jan-Apr)	43	1,670
II (May-Aug)	17	660
III (Sep-Dec)	40	1,554
Total	100	3,844

2023 Illex Squid Specifications

The 2023 *Illex* squid ABC is 40,000 mt, consistent with the Council’s recommendation and as proposed. In this final rule, however, the ABC is reduced by the discard rate of 3.42 percent, which results in a 2023 IOY, DAH, and DAP of 38,631 mt (Table 5). This discard rate is slightly lower than in the proposed rule, and lower than the Council’s recommendation (both 4.52 percent). This new discard rate represents a more accurate estimate than the discard rate in the proposed rule that appears to have been influenced by low observer coverage in 2020-2021 due to COVID-19. While the Council did not recommend this discard rate for the 2023 specifications, at its April 2023 meeting the Council used this formula in developing recommendations for the 2024-2025 specifications. NMFS determined that this discard estimate based on updated information is a more accurate than the estimated used by Council when developing its 2023 recommendation, and we are applying it for 2023 as well. This decision was made to provide a benefit to the industry without implications to the stock, as the ABC remains the same. Due to the revised commercial discard rate, the 2023 IOY, DAH, and DAP represent an increase of 475 mt compared to 2022.

Table 5 –2023 *Illex* Squid Specifications in Metric Tons

Specification	2023
OFL	Unknown
ABC	40,000
IOY	38,631
DAH/DAP	38,631

Reaffirmation of 2021-2022 Atlantic Chub Mackerel Specifications

Amendment 21 to the FMP (88 FR 6665; February 1, 2023) previously implemented chub mackerel specifications for the 2020-2022 fishing years. The Council reevaluated these specifications at its June 2022 meeting and decided to make no adjustments for the 2023-2025 fishing years. This action sets the previously implemented specifications for 2023 and projects the same for 2024-2025.

Table 6 – 2023 and Projected 2024-2025 Atlantic Chub Mackerel Specifications in Metric Tons

Specification	2023-2025
ABC	2,300
Annual Catch Limit (ACL)	2,262
Annual Catch Target	2,171
Total Allowable Landings	2,041

Additional Measures Not Part of the 2023 Mackerel, Squid, and Butterfish Specifications

In addition to implementing the specifications discussed previously, this final rule reinstates regulatory text outlining the eligibility requirements required to issue Tier 1 longfin squid moratorium permits found at 50 CFR 648.4(a)(5)(i)(A)(I) and the requirement to close the directed *Illex* fishery once a certain percentage of the DAH has been landed found at § 648.24(a)(2) that were inadvertently removed from the Code of Federal Regulations on January 1, 2023. These changes simply restore the regulatory text that was removed by mistake by the expiration of a previous action, and is being made under our administrative authority at section 305(d) of the Magnuson-Stevens Act.

Proposed Rule Comments and Responses

We received no public comments on the proposed rule published on March 7, 2023 (88 FR 14110).

Changes from the Proposed Rule

Originally the Council recommended that the *Illex* squid ABC be reduced by the status quo discard rate of 4.52 percent, which would have resulted in a 2023 IOY, DAH, and DAP of 38,192 mt. However, at the March 23, 2023, Mackerel, Squid, and Butterfish Monitoring Committee meeting, the Committee observed that *Illex* squid discards varied from 315 mt to 1,407 mt from 2012-2021, including discards estimates that may have been driven by lower coverage in 2020-2021 due to COVID-19. As such, the 2023 ABC remains at 40,000 mt, but with the IOY/DAH limit adjusted by a discard rate of 3.42 percent to 38,631 mt after accounting for 1,369 mt set aside for potential discards. These changes were made in response to the

Committee's updated discard estimate based on updated information and to account for the COVID-19 anomalies.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The start of the fishing year began on January 1, 2023. This rule slightly increases the *Illex* squid DAH and reinstates the regulatory requirement to close the directed *Illex* fishery once a certain percentage of the DAH has been landed. A delay in implementing final measures would prevent any economic benefits from this rule from being realized and prevent achieving optimal yield in the summer fishing season currently underway. Importantly, if the regulations relating to *Illex* squid closures are not promptly reinstated and made effective, we may find ourselves unable to implement such action if that fishery approaches its DAH this summer, which could occur rapidly in such a high-volume fishery. Data in the longfin squid fishery that only recently became available indicates that a trimester II closure is imminent. This rule maintains the longfin squid specifications implemented in 2022 (87 FR 27952, May 10, 2022) and the fishery would close at the same landings threshold being implemented in the 2023 specifications. However, if there is a delay in implementing the 2023 longfin squid specifications, the closure would occur under the old specifications and would likely cause confusion within the industry that the fishery is reopening once the 2023 specifications become effective. In addition, this rule

slightly reduces the butterfish ABC below the current specifications based on a recent butterfish stock assessment. Past performance suggests that this will not limit the fishery as recent landings have been and continue to remain lower than the reduced ABC, but there always remains a risk of overages with the fishery operating under the current higher specifications due to the nature of the butterfish fishery and the ability to catch high volumes of fish in a short amount of time. Lastly, this action reaffirms the chub mackerel specification currently in place for 2023, therefore, delaying implementation would be unnecessary and might add confusion for industry participants. In response to this action, unlike actions that require an adjustment period to comply with new rules, vessels will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final rule simply means adhering to the overall quotas for these fisheries and adjusted trip limits should such quotas be reached. Notably, fishery stakeholders have been involved in the development of this action and are anticipating this rule. Therefore, it is in the public interest to implement this final action as soon as possible.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 24, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, add paragraph (a)(5)(i)(A)(I) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(i) * * *

(A) * * *

(I) *Tier 1 longfin squid moratorium permit.* Beginning in February 2019, the Regional Administrator shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph (a)(5)(i)(A)(I). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin

squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

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3. In § 648.24, add paragraph (a)(2) to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) * * *

(2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 94 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

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